

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

NICE SYSTEMS, INC. and  
NICE SYSTEMS LTD.,

*Plaintiffs and Counterclaim  
Defendants,*

v.

WITNESS SYSTEMS, INC.,

*Defendant and Counterclaim  
Plaintiff.*

C.A. No. 06-311-JJF

**WITNESS SYSTEMS, INC.'S NUNC PRO TUNC MOTION FOR  
LEAVE TO FILE ITS SECOND AMENDED ANSWER,  
DEFENSES, AND COUNTERCLAIMS**

Defendant Witness Systems, Inc. ("Witness Systems") hereby respectfully moves the Court to enter an Order (1) granting Witness Systems leave to amend its First Amended Answer, Defenses, and Counterclaims to Plaintiffs' Complaint and (2) deeming Witness Systems' Second Amended Answer, Defenses, and Counterclaims (attached hereto as Exhibit "A") filed and served as of the date the Court enters its Order. Witness Systems understands that Plaintiffs NICE Systems Ltd. and NICE Systems, Inc. (collectively, "NICE") plan to oppose this Motion. This Motion was initially filed within the February 7, 2007 deadline set by paragraph 5 of the Rule 16 Scheduling Order for motions to amend the pleadings. The Court struck that filing for failure to comply with its standing order regarding the procedure for filing motions in patent cases. Witness Systems understood the standing order to apply only to discovery disputes and thus, failed to file an accompanying notice of motion. Accordingly, Witness Systems requests that the Court accept this filing Nunc Pro Tunc to February 7, 2007.

Dated: February 16, 2007

FISH & RICHARDSON P.C.

By: /s/ Kyle Wagner Compton

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Attorneys for Defendant  
Witness Systems, Inc.

**LOCAL RULE 7.1.1 CERTIFICATION**

Pursuant to D. Del. Local Rule 7.1.1, Defendant Witness Systems, Inc. (“Witness Systems”) certifies that it has sought the consent of Plaintiffs NICE Systems, Inc. and NICE Systems, Ltd. (collectively, “NICE”) to file its NUNC PRO TUNC MOTION FOR LEAVE TO FILE ITS SECOND AMENDED ANSWER, DEFENSES, AND COUNTERCLAIMS as an unopposed motion, and that NICE informed Witness Systems that NICE plans on opposing this Motion.

/s/ Kyle Wagner Compton  
Kyle Wagner Compton (#4693)

**CERTIFICATE OF SERVICE**

I hereby certify that on February 16, 2007, I electronically filed with the Clerk of Court "WITNESS SYSTEMS, INC.'S NUNC PRO TUNC MOTION FOR LEAVE TO FILE ITS SECOND AMENDED ANSWER, DEFENSES, AND COUNTERCLAIMS" using CM/ECF which will send notification of such filing(s) to the below-listed Delaware counsel. In addition, the filing will also be sent via hand delivery to:

Josy W. Ingersoll  
Melanie K. Sharp  
Karen E. Keller  
Young, Conoway, Stargatt & Taylor, LLP  
1000 West Street, 17<sup>th</sup> Floor  
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Wilmington, DE 19899

*Attorneys for Plaintiffs  
Nice Systems Ltd. and Nice Systems, Inc.*

I hereby certify that on February 16, 2007, I have emailed and sent via United States Postal Service, the document(s) to the following non-registered participants:

Scott G. Lindvall  
Daniel DiNapoli  
Joseph M. Drayton  
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/s/ Kyle Wagner Compton  
Kyle Wagner Compton

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**ORDER GRANTING DEFENDANT AND COUNTERCLAIM PLAINTIFF  
WITNESS SYSTEMS, INC.'S NUNC PRO TUNC MOTION FOR LEAVE TO FILE  
ITS SECOND AMENDED ANSWER, DEFENSES, AND COUNTERCLAIMS**

Having considered Witness Systems, Inc.'s Motion for Leave to File Its Second Amended Answer, Defenses, and Counterclaims, IT IS HEREBY ORDERED that 1) the Motion is deemed to have been filed on February 7, 2007, and 2) the Motion is granted and Witness Systems, Inc.'s Second Amended Answer, Defenses, and Counterclaims is deemed filed and served on this date.

This \_\_\_\_\_ day of February, 2007.

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Joseph J. Farnan, Jr.  
United States District Judge